United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

ORIGINAL

76-4088

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

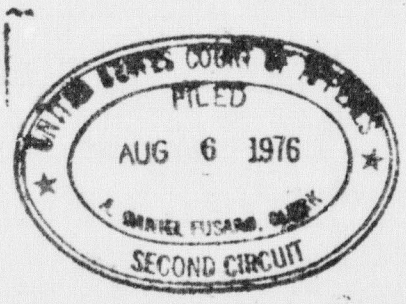
v.

ST. LUKE'S HOSPITAL CENTER AND DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL-CIO,

Respondents.

ON APPLICATION FOR DENIAL OF ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO



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COUNTER STATEMENT OF ISSUE PRESENTED

Whether the Union was properly found to have engaged in activity violative of the Act when the Board, in finding the violation, retroactively applied the 1974 hospital amendments to the Act to conduct which took place prior to the amendments and which was lawful under applicable

state law in effect at the time.

STATEMENT OF THE FACTS

On April 16, 1973 the Union filed a petition with the New York State Labor Relations Board ("NYSLRB") seeking an election among technical and professional employees (A.60).* Additional petitions were filed by various groups including dieticians, which sought to invoke the professional proviso of Section 705(2) of the State Act (A.53, 61). The NYSLRB directed that an election be held, and provided that those employees in classifications for which separate petitions had been filed would have their ballots challenged (A. 60-63). The Union won the election held on May 25, 1973 (A.65), and was certified on June 21 as the collective bargaining representative of the employees in question, excluding, for the time being, dieticians and others as to whom proceedings were to continue (A. 68, 69).

Subsequently a hearing was held on the other petitic In a decision and order dated May 22, 1974 the NYSLRB held that the professional proviso of the State Act could only be invoked "by a labor organization or other representative

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* "A" refers to the printed Appendix.

affirmatively seeking to engage in collective bargaining on behalf of the employees alleged to be professionals" (A. 77). Finding that the dieticians had not been formed for that purpose, the NYSLRB found that it was not a labor organization within the meaning of the State Act. Accordingly, the petition filed by the dieticians was dismissed and the certification amended to include the dieticians (A. 74-87).

After the original certification had issued the Hospital and District 1199 entered into a collective bargaining agreement on August 1, 1973 (A. 69-73). By an exchange of letters dated June 7 and July 19, 1974 the dieticians, among other classifications, were included within the coverage of the contract (A.88-90). On July 26, 1974 the Hospital and the Union entered into an agreement which succeeded the August 1, 1973 agreement. The latter contract also covered the dieticians (A. 91-95, 128-136).

When the Union discovered that the dieticians had not complied with the Union security provisions of the contract, it requested that they be discharged (A. 96-98). The Hospital refused to comply and the matter was submitted to Arbitrator Morris P. Glushien whose award issued on May 27, 1975 (A. 103-113).

On August 25, 1974 the amendments to the National Labor Relations Act ("Act") took effect. By these amendments

(Public Law 93-360, 93rd Congress, S.3203), coverage of the Act was extended for the first time to non-profit hospitals such as St. Lukes. Prior thereto, and at the time the contract was entered into, the New York State Act exclusively governed labor relations of non-profit hospitals.

On or about October 25, 1975 the dieticians filed unfair labor practice charges against the Hospital and the Union with the Board (A. 24, 28). The charges alleged that the attempted enforcement of the Union security clause of the contract against the dieticians violated Sections 8(a)(1) and (3), and 8(b)(1)(A) and (2) of the Act. The violation was based on the claim that the bargaining unit inappropriately included professionals (dieticians) with non-professionals without having afforded the former a self-determination election on their inclusion (A. 32-37).

Administrative Law Judge Herbert Silberman, after a hearing, dismissed the complaint, finding that Public Law 93-360 did not invalidate the agreements between the Hospital and Union as they were lawful when entered into (A. 2-9). The Board, without discussing the fact that proceedings had been initially commenced before the NYSLRB in 1973 and that both the amended certification and the collective bargaining agreement covering dieticians were in effect prior to the 1974 hospital amendments to the Act, nevertheless reversed the Administrative Law Judge and found both the Hospital and the

Union guilty of violating the Act.

POINT I

THE BOARD'S ORDER SHOULD NOT BE ENFORCED AS THE AMENDMENT TO THE ACT EXTENDING COVERAGE TO NON-PROFIT HOSPITALS CANNOT BE APPLIED RETROACTIVELY TO RENDER UNLAWFUL, ACTIONS TAKEN IN ACCORDANCE WITH APPLICABLE LAW IN EFFECT AT THE TIME.

A cardinal principle of statutory construction is that there is a general presumption against power to take retroactive action "unless Congress plainly specifies such power". Trans-Continental and Western Air, Inc. v. Civil Aeronautics Board, 169 Fed. 2d 893, 894 (D.C. Cir. 1948), aff'd. 336 U.S. 601. A statute must not be interpreted to apply retroactively unless Congress has specifically indicated a clear intention to so apply it. As the United States Supreme Court has stated:

> "Statutes are not to be given retroactive effect or construed to change the status of claims fixed in accordance with earlier provisions unless the legislative purpose so to do plainly appears." U.S. v. Magnolia Petroleum Company, 276 U.S. 160, 162-63.

In Claridge Apartments Co. v. Commissioner, 323 U.S. 141, 164, the court summed up the principle in the following manner:

> "Retroactivity, even where permissible, is not favored, except upon the clearest mandate."

More recently in Greene v. U. S., 376 U.S. 149, 160, the court again set forth rules of construction to be followed when a claim is made concerning the retroactive application of a statute:

> "As the court said in Union Pac. R. Co. v. Laramie Stockyards Co., 231 U.S. 190, 199, 34 S. Ct. 101, 102, 58 L.Ed. 179, 'the first rule of construction is that legislation must be considered as addressed to the future, not to the past . . . [and] a retrospective operation will not be given to a statute which interferes with antecedent rights . . . unless such be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature"'." See also Highway Truck Drivers and Helpers, etc. v. Cohen, 182 Fed. Supp. 608, aff'd. 284 Fed. 2d 162, (3rd Cir. 1960), (§501 of LMRDA not to be applied retroactively); Smith v. General Truck Drivers, etc., Local 467, 181 F. Supp. 14 (S.D. Calif. 1960).

In Weise v. Syracuse University, 522 F.2d 397, 410-411 (2d Cir. 1975), the court, in concluding that the 1972 amendments to Title VII of the Civil Rights Act of 1964 were not to be applied retroactively against an Employer not subject to the Act prior to the amendments, pointed out "[t]he manifest injustice of such ex post facto imposition of civil liability [which] is reflected in the general rule of construction that absent clear legislative intent statutes altering substantive rights are not to be applied retroactively." (Emphasis in original).

There is nothing in the Act which could lead to a

conclusion that Congress intended that the amendments be applied retroactively. To the contrary, a reading of the Act indicates that when Congress wanted a particular provision to apply retroactively, it specifically indicated such an intention.

Section 8(a)(3)*, the very provision relied upon by the Board itself provides that a Union Security agreement is valid if the labor organization represents a majority of the employees "in the appropriate collective bargaining unit covered by such agreement when made." (Emphasis added). In the instant case the Union Security agreement, which is not under challenge, was entered into in 1973, and was surely valid when made. Even when it became applicable to the

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* Section 8(a)(3) provides, in pertinent part that it is an unfair labor practice for an employer to engage in "discrimination in regard to hire or tenure of employment . . . to encourage or discourage membership in any labor organization...."

The proviso to Section 8(a)(3) provides in relevant part:

> "That nothing in this Act/. . . shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment . . . (1) if such labor organization is the representative of the employees as provided in Section 9(a), in the appropriate bargaining unit covered by such agreement when made. . . ."

dieticians, the agreement was in an "appropriate bargaining unit when made" as that unit had been certified by the NYSLRB when the latter agency had sole jurisdiction of the matter.

The Board's argument that the phrase "appropriate when made" solely governs contracts entered into when the Board had jurisdiction over the parties is specious. The language does not so provide and the Board has not cited any legislative history or case law that would indicate that the plain language of the statute is to be ignored or altered.

Moreover Section 8(e), in contrast, pertains to "any contract or agreement entered into heretofore or hereafter" (emphasis added), and makes any such contract referred to in that section void. By making express provision for retroactive operation in that one section, Congress manifested an intention that the statute should operate prospectively in all other cases. Continental Casualty Company v. U.S., 314 U.S. 527; Vega v. U.S. et al., 86 Fed. Supp. 293, aff'd. 191 Fed. 2d 921, cert. denied 343 U.S. 909. See also Sections 102, 103 of the Act.

Both the Board and courts have held in other cases that the Act is not to be applied retroactively. In U.S. Postal Service, 200 NLRB No. 56, 81 LRRM 1533, the Board held that it was without jurisdiction over a discharge of a postal employee which occurred prior to July 1, 1971, the date the National Labor Relations Act was made applicable to postal

employees. The Board stated:

> "Nothing in the Postal Reorganization Act invests in this Board the power to remedy an alleged wrongdoing resulting from action which occurred at a time when we did not have jurisdiction and which therefore is clearly beyond the scope of our authority. Here, all of the operative facts occurred at a time when the parties were subject to the provisions of the 'Executive Order'. The only event which occurred after July 1, 1971, was the appeal to the BAR. In our view, the attempt to overturn respondent's already effectuated discharge action does not detract from the fact that we had no jurisdiction over that discharge when it occurred."

Similarly in Beverly Farm Foundation, 225 NLRB No. 70, 92 LRRM 1425, the Board dismissed allegations of a complaint relating to conduct which occurred prior to the enactment of the health care amendments "because the Board would have declined to assert jurisdiction over Respondent at that time. . . ."

The Board, in the recent case of Vancouver Memorial Hospital, 219 NLRB No. 15, 89 LRRM 1592 recognized the prospective effect of the amendments when it held that it would assert jurisdiction over the employer "with respect to labor disputes cognizable under Sections 8, 9 and 10 of the Act, which occurred on or subsequent to August 25, 1974, the effective date of Public Law 93-360".

In this case the contract and the Union Security

clause were entered into prior to August 25, 1974, and the charging parties became subject to the provisions of that contract prior to the effective date of the amendments to the Act. Therefore all of the operative facts which led to the arbitration proceeding took place prior to the Board's obtaining jurisdiction over the parties. See also NLRB v. Mylan-Sparta Company, 166 Fed. 2d 485 (6th Cir. 1948), deciding that the 1947 amendments to the Act were prospective, not retroactive in effect; International Brotherhood of Boilermakers, etc. v. NLRB, 316 Fed. 2d 373 (D.C. Cir. 1963) holding repeal of Sections 9(f) and (g) of the Act was not to be applied retroactively.

It must be remembered that District 1199 first filed its petition with the NYSLRB in April 1973 (A.11, 117-118). It entered into a consent agreement with the dieticians hoping for a fast election. It was the NYSLRB, which I emphasize again had exclusive jurisdiction over the parties at that time, which did not approve the consent election agreement (A. 76). Therefore hearings had to be held, and while it is unfortunate that the NYSLRB's decision and amended certification did not issue until May 22, 1974 (A. 75-87), that was still before the Hospital amendments to the Act had passed, let alone become effective.*

The initial agreement of August 1, 1973 which contained the same Union security clause in question here was

* The Conference Report was accepted in the Senate on July 10, 1974 (120 Cong. Rec. 12112, Daily Ed. July 10, 1974), and in the House on July 11 (120 Cong. Rec. 6399, Daily Ed. July 11, 1974).

indisputably valid when made and it was not challenged by the Board in this case. In fact only the application of the clause to the dieticians is before the Court (A. 17-23). However, a state agency applying state law which governed at the time, issued a certification that dieticians belonged in the same bargaining unit with other employees. The parties, in including dieticians in the bargaining unit, were simply obeying applicable state law when they entered into a collective bargaining agreement, including a union security provision covering the certified unit. At the time the Act became effective the contract was in effect and nothing more remained to be done.

To hold that under these circumstances the Act was violated does violence to the language of the Act and the general proposition that legislative enactments are not to be applied retroactively. It is not surprising that the Board does not discuss the cases which so hold in its brief.

If there could be any doubt concerning the intention of the legislature, it is dispelled by the legislative history, which while sparse supports the position that the legislation is to be applied prospectively. The following colloquy took place between Representatives Thompson and Quie on the floor of the House:

> "Mr. Quie: Suppose the parties had a contract in effect at the date of enactment of the Federal legislation. Would they be allowed to continue under that contract?

> "Mr. Thompson of New Jersey: Mr. Speaker, if that contract met the requirements of the NLRB, it is our intent that it should be allowed to continue in effect for a reasonable period of time and constitute a 'contract bar'. However, if it did not meet the NLRB requirements, for instance, if it were signed with a minority union, it allowed for discrimination, or it contained an illegal union security clause, it would be questionable whether that contract would constitute a 'bar' if a petition for representation were filed. However, if the contract covered a unit the Board might not find appropriate in the original instance, it seems those contracts should also continue in effect until their expiration date, if for a reasonable period of time, since the parties have agreed to that unit."
> 120 Cong. Rec. 6393 (Daily Ed. July 11, 1974) (Emphasis added).

Thus the very situation involved in the instant case was discussed in the contract bar context and the indication was that such a contract would continue to operate as a bar. A fortiori, it would seem obvious that such a contract could not constitute an unfair labor practice which may result in serious penalties being imposed, unlike a finding that a contract is not a bar. In any event, the charging party's remedy, if the legislative history is a guide, was to file a petition and to try to convince the Board that the contract should not operate as a bar.

Even in situations where the Board undeniably has jurisdiction over the parties, when a substantive rule of law is changed, courts have held that the change cannot be applied

retroactively, at least under certain circumstances, to make illegal, actions which were lawful under prior Board rulings. NLRB v. Teamsters Union, 225 Fed. 2d 343 (8th Cir. 1955). In NLRB v. Majestic Weaving Co., Inc., 355 Fed. 2d 854 (2d Cir. 1966) the court noted that:

> "A decision branding as 'unfair' conduct stamped 'fair' at the time a party acted, raises judicial hackles considerably more than a determination that merely brings within the agency's jurisdiction an employer previously left without. . . ."

See also Retail, Wholesale and Department Store Union v. NLRB, 466 F.2d 380 (D.C. Cir. 1972), denying enforcement of the Board's order insofar as it related to reinstatement and back pay liability for any period prior to Supreme Court decision which presaged change in law.

The Board itself quite often applies substantive changes prospectively only "to avoid undesirable confusion as to the impact of this new policy on cases currently pending before the Board. . . ." Ideal Electric and Manufacturing Co., 134 NLRB 1275, 1278. See also Rockwell Manufacturing Co. v. NLRB, 330 Fed.2d 795 (7th Cir. 1964); Perma Vinyl Corp., 164 NLRB 968; Lilliston Implement Company, 171 NLRB 221.

To summarize this point it is only necessary to note that if Congress had intended to invalidate contracts valid when entered into, it surely would have made its intention clear in that regard. Since there is no such indication,

the Act must operate prospectively only. To hold otherwise would penalize the parties to the contract for obeying state law which governed their conduct when the contract was signed. The Act does not require such an absurd and unfair result.

POINT II

IN ANY EVENT THE CONTRACT, AND ITS APPLICATION TO THE CHARGING PARTIES IS NOT VIOLATIVE OF THE ACT

In Retail Clerks Union Local No. 324, etc., (Vincent Drugs No. 3, Inc.), 144 NLRB 1247, the complaint alleged that the Union had engaged in unfair labor practices within the meaning of Sections 8(b)(1)(a) and 8(b)(2) by maintaining in effect and enforcing the Union security agreement with the employer covering a unit of both professional and non-professional employees; that the professional employees had not been afforded a separate election; that the unit did not constitute an appropriate one within the meaning of the Act; and that the Union had attempted to cause the employer to discharge a professional employee for refusing to join the Union pursuant to the Union security provision of the agreement.

The Board in dismissing the complaint made the following pertinent comments:

> "Quite clearly, Section 9(b)(1) precludes the Board in a certification proceeding under Section 9 of the Act from itself establishing an appropriate

unit containing professional employees among others, unless the self-determination election requirement of Section 8(b)(1) has first been met. The Act does not, however, require prior resort to a Board determination whenever the parties establish an appropriate bargaining unit. The specific question in this case is whether Section 9(b)(1) compels a contrary result where professional employees are one of the groups involved; and whether the Board, in a Section 10 complaint proceeding involving the validity of a contract, is required to find inappropriate for the purposes of collective bargaining, simply because a self-determination election has not been held, a unit combining professional and non-professional employees, where, as here, the contract unit was initially established not by the Board, but by parties themselves and maintained without challenge for many years before the making of the contract sought to be invalidated.

"Section 9(b)(1) does not in terms condemn such a contract unit as inappropriate. Nor do we find anything in the legislative history of that section to suggest that Congress had any such intent." (Emphasis in original).

Similarly, in Pharmacists and Retail Drug Store Employees Union Local 330, RCIA v. Lake Hill Drug Co., 255 Fed. Supp. 910 (W.D.Wa. 1964) the court stated:

"Irrespective of the effect of Section 9(b)(1) on Board action in a certification proceeding, the Court is of the view it was never intended to invalidate a contract covering an employee unit which includes both professional and non-professional employees where the parties to the contract have voluntarily entered into such an agreement."

Cf. Penn Power and Light Company, 122 NLRB 293 (contract a bar

despite the fact that professionals included in a unit with non-professionals without having a separate vote); C. G. Willis, Inc., 119 NLRB 1677 (contract not rendered inoperable as bar because supervisors, excluded from a consent election agreement, included in the bargaining unit).

If parties to a contract can lawfully voluntarily agree to include professionals and non-professionals in a contract without giving the former a self-determination election, it surely cannot be an unfair labor practice to do so when the parties are following a final and binding direction of a state agency which had jurisdiction over the parties at the time.

Brookhaven Memorial Hospital, 214 NLRB No. 159, 87 LRRM 1428, relied upon by the Board is inapposite. That case involved a petition, not a charge, and as the Board noted, the state election there had not been completed. That being the case, for the Board to give effect to the inchoate state election would have meant that it was in effect certifying the results contrary to Section 9(b)(1). In this case the State Board proceeding had been completed months prior to the effective date of the amendment to the Act, and a certification had been issued by the state agency.

Moreover there is a distinction between the filing of a petition, especially when no contract has been entered into, as was the case in Brookhaven, and in filing a charge

after a contract has been signed in accord with prevailing state law in effect at the time.

Similarly Mental Health Center of Boulder County, Inc., 222 NLRB No. 146, 91 LRRM 1326, also cited by the Board is not in point. In Boulder County the state election, which included professionals and non-professionals in a single unit, was conducted in 1975, after the Health Care Amendments had become effective. In this case, of course, the election was held in 1973, long before the Amendments were in effect.

Furthermore the Board carries the burden of proving all elements of an unfair labor practice charge. Textile Workers Union v. NLRB (Hercules Packing Corp.), 386 Fed. 2d 790 (2d Cir. 1967). This includes proving the illegality of the enforcement of the Union Security clause. See Local Lodge 1424 v. NLRB (Bryan Manufacturing Co.), 362 U.S. 411, 417 fn. 7. A union violates Section 8(b)(1)(a) of the Act if it is given exclusive recognition at a time when it does not represent a majority of the employees in the unit. ILGWU v. NLRB (Bernhard-Altmann Texas Corp.), 366 U.S. 721. In the Altmann and other cases the Board proved that the Union did not represent a majority of the employees. See, e.g. Kenrich Petrochemicals, Inc., 149 NLRB 910, where the Board was able to show that only three of seven employees were Union members.

In the instant case the Board made no attempt to

show that District 1199 did not represent a majority of the employees in the unit, or even a majority of the professional employees, undoubtedly because the vast majority of such employees have been dues paying members since 1973 and have not raised any objection to their inclusion in the unit (A. 102, 144, 145). The Board conceded that Section 10(b) of the Act precluded litigating the legality of the inclusion of most of the other professionals in the contract or the legality of the contract itself. In fact the Union Security clause, valid on its face, is beyond challenge (A. 152-164).

The Board cannot contend that it now has jurisdiction over this matter which arose prior to the amendments to the Act and at the same time ignore current Board case law. In Mercy Hospitals of Sacramento, Inc., 217 NLRB No. 131, 89 LRRM 1097, and subsequent cases,* the Board held that, with exceptions not pertinent here, all professionals belong in a single unit in the health care industry. Since the Board has not proven that a majority of the professional employees did not desire to be represented by District 1199, its order cannot be enforced. To enforce the order would allow the dieticians to have a

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* Dominican Santa Cruz Hospital, 218 NLRB No. 182, 89 LRRM 1504; Beth Israel Hospital Center, 219 NLRB No. 93, 89 LRRM 1685; Kaiser Foundation Hospitals, 219 NLRB No. 28, 89 LRRM 1763.

separate vote on inclusion or exclusion from the unit, contrary to Board decisions.

This does not leave the charging parties without a remedy. The professionals would have a right to file a representation petition "at an appropriate time and in an appropriate proceeding" (International Tel and Tel, 159 NLRB 1757, 1764, fn. 15), even if they could not file a decertification petition. Cf. Westinghouse Electric Corp., 116 NLRB 1545 with Westinghouse Electric Corp., 115 NLRB 530.

CONCLUSION

For the above stated reasons, the order of the Board should not be enforced.

Respectfully submitted,

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Attorneys for District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO

Of Counsel:

RICHARD DORN

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

Docket
~~Index~~ No. 76-4088

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

National Labor Relations Board,

Petitioner

against

ST. LUKE'S HOSPITAL CENTER AND DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL-CIO,
Respondents

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 101 West 80th St. New York, N.Y. 10024

That on August 5 *19* 76 *deponent served the annexed*
Brief for District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO
on MICHAEL S. WINER, Esq.,
attorney(s) for National Labor Relations Board, Petitioner
in this action at National Labor Relations Board, Washington, D.C. 20570 *the address designated by said attorney(s) for that purpose by depositing* two *true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.*

Sworn to before me
August 5, 1976

GEORGE COHEN
Notary Public, State of New
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1977

August De Fonse
The name signed must be printed beneath
AUGUST DE FONSE

2 Copies Received

Date August 5, 1976

Firm Simpson, Thacher & Bartlett

By

affidavit

76-4088

UNITED STATES OF AMERICA

COURT OF APPEALS FOR THE SECOND CIRCUIT

- -x

NATIONAL LABOR RELATIONS BOARD, :

Petitioner, :

-against- : AFFIDAVIT

ST. LUKE'S HOSPITAL CENTER : Docket No. 76-4088

and :

DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, R.W.D.S.U., AFL-CIO, :

Respondents. :

- x

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JAMES S. FRANK, being duly sworn, deposes and says that:

1. I am associated with the firm of Simpson Thacher and Bartlett, attorneys for St. Luke's Hospital Center and am admitted to practice before this Court.

2. St. Luke's Hospital Center believes that the facts and its position are fully and adequately set forth in the record which has been certified to this Court by the National Labor Relations Board.

B P/S

3. To avoid burdening this Court with a repetitious restatement of the facts and argument, St. Luke's Hospital Center will not file a brief in this case but rather will rely on the record certified to the Court.

James A. Frank

James S. Frank

Sworn to before me on this
5th day of August, 1976

Patricia Green

Notary Public

PATRICIA GREEN
Notary Public, State of New York
No. 24-6641758
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, -against- ST. LUKE'S HOSPITAL CENTER AND DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, R.W.D.S.U., AFL-CIO, Respondents.	)	Docket No. 76-4088

CERTIFICATE OF SERVICE

The undersigned, an attorney admitted to practice in the courts of New York State and before this Court, certifies that one copy of the attached affidavit in regard to the above case has this day been served by first class mail upon each of the following counsel at the addresses listed below:

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Dated: New York, New York
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Docket No. 76-4088

UNITED STATES OF AMERICA

COURT OF APPEALS FOR THE
SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

-against-

ST. LUKE'S HOSPITAL CENTER

and

DISTRICT 1199, NATIONAL UNION
OF HOSPITAL AND HEALTH CARE
EMPLOYEES, R.W.D.S.U., AFL-CIO,

Respondents.

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